

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X	<b>Docket#</b>	
UNITED STATES OF AMERICA,	:	07-cr-368 (ERK) (MDG)
	:	
- versus -	:	U.S. Courthouse
	:	Brooklyn, New York
RICHARDSON, et al.,	:	
Defendant	:	July 11, 2008
-----X		

TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE  
BEFORE THE HONORABLE EDWARD R. KORMAN  
UNITED STATES DISTRICT JUDGE

**A P P E A R A N C E S:**

**For the Government:**                      **Benton Campbell, Esq.**  
United States Attorney

BY:    **Morris Fodeman, Esq.**  
         **Ashleigh Washington**  
         Assistant U.S. Attorney  
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         Brooklyn, New York 11201

**For Defendant Richardson:**    **Susan Kellman, Esq.**

**For Defendant Moore:**            **Harry Batchelder, Jr., Esq.**

**For Defendant Rountree:**        **Bruce McIntyre, Esq.**

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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1 THE CLERK: United States of America v. Dayshen  
2 Richardson, Charles Moore, Demiya Rountree.

3 Your appearances, counsel.

4 MR. FODEMAN: Morris Fodeman and Ashleigh  
5 Washington (phonetic) for the United States.

6 Good afternoon, Judge.

7 MS. KELLMAN: Good afternoon, your Honor.

8 Susan Kellman for Dayshen Richardson.

9 MR. BATCHELDER: Good afternoon, sir.

10 Harry C. Batchelder, Jr. for defendant Charles  
11 Moore.

12 MR. McINTYRE: Bruce McIntyre on behalf of  
13 Mr. Rountree.

14 Good afternoon, your Honor.

15 THE CLERK: Judge, the record should reflect  
16 that the marshals contacted me this morning.  
17 Mr. Richardson refused to come down for the call in the  
18 bus. Mr. Moore called in sick and was not brought over.  
19 Your Honor did (inaudible).

20 Counsel?

21 MR. McINTYRE: Judge?

22 MR. FODEMAN: As you know, this case has been  
23 pending for time. I think it goes back to spring of  
24 2007. The defendants were three of six defendants  
25 charged in a ten to life crack cocaine conspiracy case.

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1 As -- three of the defendants have pled guilty, these are  
2 the remaining defendants.

3 It seems like the case may go to trial as to  
4 one or two of the defendants. Ms. Kellman filed  
5 something on ECF yesterday seeking severance of certain  
6 counts. So maybe she can enlighten us further on that in  
7 that regard.

8 MS. KELLMAN: Your Honor, discussions with my  
9 client in which he has communicated to me in the interest  
10 of disposing of his case by plea which I think is a good  
11 thing. We have not been able to agree with the  
12 government on exactly which counts he would plead to and  
13 I've tried to outline in my motion for severance, the  
14 counts that I understand my client would be prepared to  
15 enter a plea to. And what I was proposing to the Court  
16 was the possibility of having my client -- have the Court  
17 sever the counts that my client is prepared to plead to.  
18 I exposes him to about 240 years in prison which gives  
19 the Court an awfully great range. There is a mandatory  
20 minimum of five years on one of those counts.

21 And if and when the defendant was -- and hold  
22 the remaining counts in abeyance and following my  
23 client's plea and his sentencing, the other counts would  
24 be out there and if the government thought it was  
25 necessary, I am sure that we could have a trial on the

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1 balance of the counts. I thought it was a --

2 THE COURT: It sounds reasonable to me.

3 MR. FODEMAN: Yes, I am not sure there's  
4 anything that I can do to solve it though. He's offering  
5 to plead guilty to certain counts in the indictment. I'm  
6 not sure that's a basis for the Court not to accept that  
7 guilty plea. I think that those -- his allocution -- the  
8 allocutions for those counts though, I would think would  
9 be admissible against him should the government ever go  
10 to trial against the remaining counts. He's offering to  
11 plead guilty to the substantive counts and --

12 THE COURT: I assume that that would be subject  
13 to other rules like, you know, whether they were  
14 otherwise relevant, admissible and, you know, all of the  
15 other balancing factors.

16 MR. FODEMAN: Sure, Judge. But it's something  
17 that I am sure Ms. Kellman will discuss with her client,  
18 the risk of going forward under this proposed course.

19 THE COURT: I don't know why you should object  
20 to it.

21 MR. FODEMAN: Yes.

22 THE COURT: No, I don't know why you should --  
23 why that isn't a satisfactory disposition in total and  
24 why you should hold anything open. I don't know what's  
25 wrong with this as a disposition but that's your

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1 business. I don't get involved in that.

2 MR. FODEMAN: Well --

3 MS. KELLMAN: That's why I wrote it because I  
4 didn't want the Court to be involved in it. That would  
5 be inappropriate.

6 THE COURT: Well I don't need his permission to  
7 do what you want.

8 MR. FODEMAN: Right.

9 MS. KELLMAN: I thought that.

10 THE COURT: All I am suggesting is that, you  
11 know, it sounds reasonable in general. We're not talking  
12 about what sentence should be imposed.

13 MS. KELLMAN: And I have explained to my  
14 client, your Honor, that whether he pleads to the one  
15 count conspiracy which the government has encouraged us  
16 to do or pleads to these eleven counts, his exposure is  
17 extraordinary and that in a Fatico hearing --

18 THE COURT: Well, what is the government's --  
19 what are you holding out for? I am just curious.

20 MR. FODEMAN: Well the --

21 MS. KELLMAN: More than 240 years apparently.

22 MR. FODEMAN: There is a statutory minimum  
23 sentence --

24 THE COURT: They don't trust me.

25 MS. KELLMAN: They don't trust you. That is

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1 what it is about.

2 MR. FODEMAN: I didn't want to say it exactly  
3 that way, Judge.

4 MS. KELLMAN: But that's why I wrote it that  
5 way, Judge. That is clearly what's -- they don't think  
6 that you're capable of 240 years.

7 MR. FODEMAN: Well, that may have something to  
8 -- no, I -- I will leave it at that.

9 THE COURT: Well go ahead. If you want to  
10 schedule the plea, go ahead. Then we'll sever the -- we  
11 won't go to trial and we'll sever the counts.

12 MR. FODEMAN: Just, you don't think that -- I  
13 am addressing counsel, but are other concern and I don't  
14 think this is actually -- it bears out but there is no  
15 way that the defense is going to claim that we're barred  
16 by some sort of double jeopardy because he's plead to  
17 those counts.

18 MS. KELLMAN: I haven't given it any thought  
19 but frankly, I can't imagine how that would --

20 MR. FODEMAN: I don't think so.

21 MS. KELLMAN: This is just what it is. He  
22 wants these counts severed so he can plead to them  
23 because he wants to plead guilty to the things he did  
24 wrong. That's what he has been telling me since the day  
25 I met him and that's not been acceptable to the

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1 government and it appears to be acceptable to the Court  
2 in which case I moved for the severance. He's told me  
3 he's prepared to plead.

4 MR. FODEMAN: Very good.

5 THE COURT: All right, so --

6 MS. KELLMAN: And will there be a force order?

7 MR. FODEMAN: Yes. Should I prepare a force  
8 order, Judge?

9 THE COURT: What is a force order?

10 MS. KELLMAN: It makes him come.

11 MR. FODEMAN: The --

12 THE COURT: Well, in that case --

13 MR. FODEMAN: There's more encouragement than  
14 if you want to --

15 THE COURT: He can't plead from the jail  
16 unfortunately, so I assume you will be able to discuss  
17 with him that -- if he wants to do this, he should show  
18 up here. Why don't you check? If we can avoid a force  
19 order --

20 MS. KELLMAN: Because I am going to be out of  
21 town, Judge, and I am coming back just in time to handle  
22 this.

23 THE COURT: Well, you want me to -- I will do a  
24 force order.

25 MR. FODEMAN: And the other alternative would



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1 be to give him one more chance and if that doesn't work  
2 we could do a force order for later in the week.

3 MS. KELLMAN: I mean, I could probably talk to  
4 his family but it's impossible for me to see him before  
5 Tuesday.

6 MR. FODEMAN: I mean, frequently what happens -  
7 - I've had this situation before when the prison  
8 personnel show up at the cell door with a force order,  
9 there's usually not the need for force. I don't know.

10 MS. KELLMAN: They realize they have to go.

11 MR. FODEMAN: They go quietly, Judge.

12 MS. KELLMAN: He's a lot like me. He's  
13 extremely argumentative.

14 THE COURT: We'll have Harry execute the force  
15 order. That will insure he comes.

16 MR. BATCHELDER: You're so cruel.

17 THE COURT: Okay. So we'll do that. Please  
18 submit the force order.

19 MR. FODEMAN: I will and under the  
20 circumstances, we would ask that time be excluded.

21 THE COURT: Yes, obviously.

22 MR. BATCHELDER: And on the Tuesday you will  
23 probably be here also --

24 THE COURT: All right. The time is excluded  
25 with respect to --

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1           MR. BATCHELDER:  -- for Mr. Moore, so I am  
2 going to visit with him --

3           THE COURT:  Well, you will arrange for the  
4 magistrate to take the plea.  I don't have to take the  
5 plea in this case, unless you insist but I don't see that  
6 I have to take the plea.

7           MR. BATCHELDER:  But I have to appear before  
8 you.

9           THE COURT:  On what?

10          MR. BATCHELDER:  I have the other defendant.

11          THE COURT:  Oh, okay.

12          MR. BATCHELDER:  Mr. Moore --

13          THE COURT:  Oh, he is the one who is sick.

14          MR. BATCHELDER:  -- who has always asked for a  
15 speedy trial.  Now there's no reason not to do it.

16          THE COURT:  No, there's no reason not to do it.

17          MR. BATCHELDER:  It looks like everybody is  
18 going to be out of the case but him.

19          THE COURT:  That's right.

20          MR. BATCHELDER:  And I am going to convey that  
21 to him.  Could I please, your Honor, at CJA expense, have  
22 a copy of these proceedings, so I can send it to him?

23          THE COURT:  What happened here that effected  
24 him?

25          MR. BATCHELDER:  The whole idea of his

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1 co-defendant pleading guilty.

2 THE COURT: Oh, okay.

3 MR. BATCHELDER: -- it may or may not have an  
4 effect.

5 THE COURT: Okay. Order the minutes.

6 MR. BATCHELDER: Thank you.

7 (Counsel and clerk confer)

8 THE COURT: With respect to the defendant  
9 Richardson, the time is excluded because he is going to  
10 plead. The purpose of the delay is to proceedings to  
11 culminate in the disposition of the case without the  
12 necessity for trial. I find the considerations  
13 underlying the Speedy Trial Act are outweighed by the  
14 interest of justice. The delay is excludable with  
15 respect to Mr. Batchelder's client because his client is  
16 not here because of illness.

17 THE CLERK: Judge, I have spoken with counsel  
18 regarding the last defendant, Demiya Rountree and  
19 apparently there is some further discovery that needs to  
20 be provided that may very well be dispositive of the  
21 case. A month, actually -- I think that's fine.

22 THE COURT: Okay.

23 THE CLERK: So, August 15.

24 THE COURT: Okay. Because the purpose of the  
25 delay still allows discussions to go forward that could

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1 resolve in the disposition of the case without the  
2 necessity for a trial, I find the considerations  
3 underlying the Speedy Trial Act are outweighed by the  
4 interest of justice and that the delay is excludable.

5 MS. KELLMAN: Thank you, Judge.

6 MR. FODEMAN: Thank you, Judge.

7 MR. McINTYRE: Thank you.

8 MR. BATCHELDER: Thank you.

9 THE CLERK: Counsel, do you want it on daily?

10 MR. BATCHELDER: Daily is pretty expensive.

11 THE CLERK: It's a short transcript.

12 THE COURT: It doesn't matter. It's so short,  
13 the transcript --

14 MS. KELLMAN: And I was just wondering, can I  
15 also get a copy and then I can share it with my client as  
16 quickly as possible.

17 THE COURT: Yes.

18 (Matter concluded)

19 -oOo-

## C E R T I F I C A T E

I, ROSALIE LOMBARDI, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 11th day of July , 2008.

  
Rosalie Lombardi  
Transcription Plus II